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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/777,946	02/06/2001	Hideo Kawahara	1232-4680	3252

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EXAMINER

VIEAUX, GARY

ART UNIT PAPER NUMBER

2622

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	01/25/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

DETAILED ACTION***Amendment***

The Amendment, filed November 17, 2006, has been received and made of record. In response to the most recent Office Action, dated August 23, 2006, claims 1, 12, 21, and 22 have been amended. Claims 2-9, 11, 13-18, 20, 23-26, and 31-38 have been previously cancelled.

Response to Amendment

Regarding amended claim 1, the claim has been amended to correct the previously identified informality regarding punctuation, and therefore, the objection to claim 1 is withdrawn.

Response to Arguments

Applicant's arguments filed November 17, 2006 have been fully considered but they are not persuasive.

Regarding the 35 U.S.C. §112 first paragraph rejections of claims 1, 12, 21, and 22, Applicant submits that although the word "histogram" does not exist in the third embodiment, it is described in the first and the second embodiments. (Specification at page 17, line 20, to page 18, line 9, and page 21, line 19, to page 22, line 8, respectively), and therefore, the claim elements recited in claim 12, 21 and 22 are actually supported by the specification. The Examiner respectfully disagrees.

Figure 11 is a block diagram showing the arrangement of an image sensing

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apparatus according to the third embodiment of the present invention (Specification, p.23 lines 23-25.) Although the third embodiment employs a "range", per se, (Specification, p.28, line 26), this "range" is not found to be employed in conjunction with a histogram anywhere within this embodiment (see Specification, p.23-29.) Based on the foregoing, the Examiner stands behind the 35 U.S.C. §112 first paragraph rejection of claims 1, 12, 21, and 22 for failing to comply with the written description requirement.

It is also noted that the most recent amendments (dated November 17, 2006, and July 26, 2006) possibly, pending resolution of the existing §112 issues, deviate from the originally claimed subject matter, and therefore would be subject to a restriction by original presentation.

Regarding the 35 U.S.C. §112 second paragraph rejections of claims 1, 12, 21, and 22, Applicant has amended the application in an attempt to clarify the invention as recited in claims 1, 12, 21, and 22 (Remarks, p.7.) However, ambiguity still exists. Based on the claims as interpreted, the first two instances of the term "areas" (now "area") appeared to be correctly applied prior to amendment, in that they referred to the areas that the luminance signals are applied to (e.g., claim 1, lines 3 and 5.) Original ambiguity arose in connection with those instances of "areas" and the use of the term "area" (e.g., claim 1, lines 7 and 10), to which it was unclear whether the "area" in question relates to the "plurality of areas" (e.g., claim 1, lines 3 and 5) or to an "area" of the histogram (e.g., claim 1, lines 7-8.) As this ambiguity still exists, which prevents the

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metes and bounds of the claims to be readily ascertained, the Examiner stands behind the 35 U.S.C. §112 second paragraph rejection of claims 1, 12, 21, and 22.

CLAIM REJECTIONS

5 ***Claim Rejections - 35 USC § 112, first paragraph***

The following is a quotation of the first paragraph of 35 U.S.C. §112:

10 The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1, 12, 21 and 22 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Independent claims 1, 12, 21, and 22 included language that employs a histogram of a luminance distribution in conjunction with predetermined ranges. However, the Specification was not found to include support for these limitations employed in concert with one another. The closest interpretation involving any "range" was found to exist with a different embodiment that did not employ a histogram (third embodiment, Specification p.23-29.)

Claims 10, 19, and 27-30 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement, based on their dependence to rejected independent claims 1, 12, 21, and 22.

Claim Rejections - 35 USC § 112, second paragraph

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5

Claims 1, 12, 21 and 22 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are replete with grammatical and idiomatic errors.

Additionally, independent claims 1, 12, 21, and 22 include indefinite language that generates multiple applications/interpretations of the terms "area", and therefore does not distinctly define the claimed subject matter. These include the plurality of an "area" from which the luminance signals are derived and an "area" of a histogram; an area which also is /can be confused with the magnitudes or blocks found within the histogram (Specification, p. 12-19.) Therefore, the metes and bounds of the claims cannot be readily ascertained.

Claims 10, 19, and 27-30 are rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention, based on their dependence to rejected independent claims 1, 12, 21, and 22.

It is also noted by the Examiner, that due to the existing 35 U.S.C. §112 rejections, an examination on the merits of the claims is precluded.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE**
5 **MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of
10 the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Contact

Any inquiry concerning this communication or earlier communications from the
15 examiner should be directed to Gary C. Vieaux whose telephone number is 571-272-7318. The examiner can normally be reached on Monday - Friday, 8:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, NgocYen T. Vu can be reached on 571-272-7320. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Gary C. Vieaux
Examiner
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Gcv2


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